

REMARKS

Claims 2-10, as amended, appear in this application for the Examiner's review and consideration. Claims 11-20 have been cancelled without prejudice to applicants' rights to file a divisional application for the subject matter of those claims. Claim 1 has been cancelled while claims 2 and 6 have been amended to independent form. Claims 4, 9 and 10 have been amended to correct informalities. Also, new claims 21-30 have been added. New claims 21-23 are based on the amendments made to claims 4, 9 and 10. New claims 24-26 are based on paragraph [0016] of the published application. New claims 27-30 are based upon original claims 7-10. As no new matter has been introduced in making these changes and additions, they all should be entered at this time.

Regarding the Examiner's restriction requirement, Applicants confirm the election of the product claims of Group I for prosecution in this application. Accordingly, claims 11-20 have been cancelled without prejudice to Applicants' rights to file a divisional application for the subject matter of those claims. As the new claims are also directed to products, all of the current claims, namely 2-10 and 21-30, should be examined together at this time.

Claims 4, 9 and 10 were rejected under 35 USC 112, second paragraph, for the reasons set forth on pages 3-4 of the action. In response, Applicants have amended these claims to delete the preferred ranges and to present them in new claims 21-23. Accordingly, this rejection has been overcome and should be withdrawn.

The cancellation of claim 1 thus renders moot the anticipation rejection.

Claims 2-10 were rejected under 35 USC 103(a) as being unpatentable over the combination of US patent 6,461,653 to Cox and US patent 6,379,724 to Best et al. ("Best") for the reasons set forth on pages 6-8 of the action. Applicants traverse this rejection.

This rejection should be withdrawn since the Best patent is not prior art to the present claims. 35 U.S.C. § 103(c) provides that subject matter that only qualifies as prior art under 35 U.S.C. § 102(e) and that is commonly owned at the time the invention was made cannot be applied in a rejection under 35 U.S.C. § 103(a). This provision applies to all applications filed on or after November 29, 1999, and it is applicable to the current application that was filed May 1, 2001. As the Best patent is owned by Nestec SA, the same assignee as the present application, and as it was not published until after the filing date of this application, the Best patent cannot be validly cited as prior art against the present claims.

In addition, Applicants have found that the Best patent has a PCT equivalent, but that application, WO01/30175, was not published until May 3, 2001. As that date is two days

after the filing date of the present application, the Best PCT application also is not prior art to the present claims. As neither the Best patent nor any of its corresponding foreign equivalents are prior art to the present invention, the Examiner's combination rejection has been overcome. Thus, claims 2-10 and 21-23 are in condition for allowance, early notice of which would be appreciated.

In the event that the Examiner not agree that all claims are patentable, then a personal or telephonic interview is respectfully requested to discuss any remaining issues and expedite the allowance of this application.

Respectfully submitted,

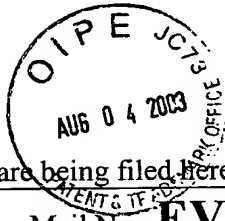
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The following items listed below are being filed herewith with the USPTO on **August 4, 2003**

Express Mail No. **EV 346 809 588 US**

Attorney Docket No.	Appln. Serial No.	Items - Documents filed on August 4, 2003
88265.4031	09/846,989	Amendment

*Please acknowledge receipt of these items as received by returning
the enclosed postcards with the date of receipt of August 4, 2003*